

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TRAVELERS CASUALTY AND SURETY COMPANY  
as Administrator for RELIANCE INSURANCE  
COMPANY,

Plaintiff,

-against-

DORMITORY AUTHORITY - STATE OF NEW YORK,  
TDX CONSTRUCTION CORP. and KOHN PEDERSEN  
FOX ASSOCIATES, P.C.,

Defendants.  
----- X

DORMITORY AUTHORITY OF THE STATE OF NEW  
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.  
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TRATAROS CONSTRUCTION, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

-against-

CAROLINA CASUALTY INSURANCE COMPANY, *et*  
*al.*,

Fourth-Party Defendants.  
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07 Civ. 6915 (DLC)  
ECF CASE

DEFENDANT KOHN  
PEDERSEN FOX  
ASSOCIATES, P.C.'S  
REPLY TO THE CROSS-  
CLAIMS AND  
COUNTERCLAIMS OF  
THIRD-PARTY  
DEFENDANT  
WEIDLINGER  
ASSOCIATES  
CONSULTING  
ENGINEERS, P.C.

*\*\*Electronically Filed\*\**

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KOHN PEDERSEN FOX ASSOCIATES, P.C.,	:
Third-Party Plaintiff,	:
-against-	:
WEIDLINGER ASSOCIATES CONSULTING	:
ENGINEERS, P.C., CASTRO-BLANCO PISCIONERI	:
AND ASSOCIATES, ARCHITECTS, P.C.,	:
ARQUITECTONICA NEW YORK, P.C., COSENTINI	:
ASSOCIATES, INC., CERMAK, PETERKA PETERSEN,	:
INC. JORDAN PANEL SYSTEMS CORP., TRATAROS	:
CONSTRUCTION, INC. and LBL SKYSYSTEMS	:
(U.S.A.), INC.,	:
Third-Party Defendants.	:
-----	X

Defendant Kohn Pedersen Fox Associates, P.C. ("KPF"), by its attorneys, Zetlin & De Chiara, LLP, as and for its Reply to the Cross-Claims and Counterclaims (the "Counterclaim") of Third-Party Defendant Weidlinger Associates Consulting Engineers, P.C. ("Weidlinger"), respectfully alleges and says as follows:

1. Paragraph 46 of the Counterclaim set forth legal conclusion as to which no response is required. To the extent that a response is required, KPF denies the allegations set forth in Paragraph 46 insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

2. Paragraph 47 of the Counterclaim set forth legal conclusion as to which no response is required. To the extent that a response is required, KPF denies the allegations set forth in Paragraph 47 insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

3. Denies the allegations set forth in paragraph 48 of the Counterclaim insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

4. Paragraph 49 of the Counterclaim set forth legal conclusion as to which no response is required. To the extent that a response is required, KPF denies the allegations set forth in Paragraph 49 insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5. The Court lacks subject matter jurisdiction over this controversy.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

6. The Counterclaim fails to state a cause of action against KPF upon which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

7. The Counterclaim against KPF is barred by waiver, payment and release.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

8. Weidlinger is estopped from bringing the Counterclaim against KPF.

**AS AND FOR AN FIFTH AFFIRMATIVE DEFENSE**

9. Whatever damages Weidlinger may have sustained as alleged in the Counterclaim against KPF, all of which are denied by KPF, were caused in whole or in part by the culpable conduct of Weidlinger and/or others for whose acts, omissions and/or conduct Weidlinger is responsible. The amount of damages recovered, if any, shall therefore be

diminished in the proportion which the culpable conduct attributable to Weidlinger bears to the culpable conduct which caused these alleged damages.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE**

10. The damages alleged in the Counterclaim against KPF were caused by the culpable conduct of some third person or persons over whom KPF neither had nor exercised control.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

11. The claims alleged in the Counterclaim against KPF are barred by the doctrines of waiver and/or laches.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

12. KPF incorporates by reference each and every of the Affirmative Defenses set forth in its Answer to Plaintiff's Complaint and realleges same as though fully set forth herein.

**WHEREFORE**, Kohn Pedersen Fox Associates, P.C. demands judgment,

- (a) Dismissing the Counterclaim in its entirety;
- (b) Awarding KPF its attorneys' fees, disbursements and costs incurred in defending this Counterclaim; and
- (c) Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
April 24, 2008

**ZETLIN & DE CHIARA LLP**  
*Attorneys for Defendant*  
*Kohn Pedersen Fox Associates, P.C.*  
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